

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	X	
	:	
SARAH PALIN,	:	No. 17 Civ. 4853
	:	
Plaintiff,	:	
	:	
	:	Hon. Jed S. Rakoff
	:	
-against-	:	
	:	
	:	ECF Case
	:	
THE NEW YORK TIMES COMPANY and JAMES	:	
BENNET,	:	
	:	
Defendants.	:	
	:	
-----	X	

**DECLARATION OF JACQUELYN N. SCHELL**

Jacquelyn N. Schell, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am associated with the law firm of Ballard Spahr LLP, counsel for Defendants The New York Times Company (“The Times”) and James Bennet (together, “Defendants”) in the above-captioned action. I submit this declaration in opposition to Plaintiff’s Motion for Partial Summary Judgment. I have personal knowledge of the facts herein.
2. Attached hereto as **Exhibit 62** is a true and correct copy of excerpts from the Brief and Special Appendix of Plaintiff-Appellant filed by Plaintiff in the United States Court of Appeals for the Second Circuit in *Palin v. N.Y. Times Co.*, No. 17-3801, as Dkt. 53.
3. Attached hereto as **Exhibit 63** is a true and correct copy of excerpts from the Reply Brief of Plaintiff-Appellant filed by Plaintiff in the United States Court of Appeals for the Second Circuit in *Palin v. N.Y. Times Co.*, No. 17-3801, as Dkt. 83.
4. Attached hereto as **Exhibit 64** is a true and correct copy of additional excerpts from the transcript of the deposition of Timothy Crawford, held on May 12, 2020.

5. Attached hereto as **Exhibit 65** is a true and correct copy of additional excerpts from the transcript of the deposition of Sarah Palin, held on May 20 and 21, 2020.

6. Attached hereto as **Exhibit 66** is a true and correct copy of excerpts from the transcript of the hearing held by this Court on July 31, 2017, related to The Times's Motion to Dismiss Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 10, 2020  
New York, New York



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Jacquelyn N. Schell

# Exhibit 62

# No. 17-3801

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IN THE  
**United States Court of Appeals**  
**FOR THE SECOND CIRCUIT**

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SARAH PALIN, an individual,

*Plaintiff-Appellant,*

—against—

THE NEW YORK TIMES COMPANY,

*Defendant-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
Case No. 1:17-cv-04853-JSR, Hon. Jed S. Rakoff

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## BRIEF AND SPECIAL APPENDIX OF PLAINTIFF-APPELLANT

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---

would have to be brought home to the persons in [defendant’s] organization having responsibility for the [statement’s] publication,” and this Court’s statement in *Dongguk University v. Yale University*, 734 F.3d 113, 123 (2d Cir. 2013), echoing *Sullivan*. But critically, neither *Sullivan* nor *Dongguk* commented on ***pleading*** requirements. *Sullivan* involved the question of ultimate proof of actual malice after trial, 376 U.S. at 262, and *Dongguk* involved the same question at summary judgment, 734 F.3d at 122—that is, after discovery.<sup>7</sup>

Importantly, it has long been the rule that, “[a]t the pleading stage, plaintiffs ***cannot*** be required to identify [facts] ... [or] information ... uniquely in the possession of defendants. Rather, plaintiffs satisfy their burden where their allegations raise a reasonable expectation that discovery will reveal evidence proving their claim.” *E.g.*, *Royal Park Invs. SA v. Bank of N.Y. Mellon*, No. 14-cv-6502, 2016 WL 899320, at \*5 (S.D.N.Y. Mar. 2, 2016) (collecting cases). There is

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<sup>7</sup> To the extent the Court believes that *Sullivan* or *Dongguk* require a defamation-plaintiff to plead that an individual employee of a defamation-defendant-publisher whose identity was concealed by the publisher acted with actual malice to survive a motion to dismiss—neither does—Mrs. Palin recognizes that those decisions would bind this Court. Mrs. Palin, however, expressly preserves her challenge to those decisions, which if interpreted in that manner, are incorrect and fundamentally at odds with the law governing the knowledge of organizations in other areas (e.g., fraud), *e.g.*, *In re WorldCom, Inc. Sec. Litig.*, 352 F. Supp. 2d 472, 497 (S.D.N.Y. 2005) (citing *United States v. Bank of New England, N.A.*, 821 F.2d 844, 855-56 (1st Cir. 1987)), and would allow publishers to defame at will and avoid liability by concealing the identity of an individual author and compartmentalizing knowledge across employees.

Date: February 20, 2018

Respectfully Submitted,

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# Exhibit 63

# No. 17-3801

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IN THE  
**United States Court of Appeals**  
**FOR THE SECOND CIRCUIT**

---

◆ ◆ ◆

SARAH PALIN, an individual,

*Plaintiff-Appellant,*

—against—

THE NEW YORK TIMES COMPANY,

*Defendant-Appellee.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
Case No. 1:17-cv-04853-JSR, Hon. Jed S. Rakoff

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## REPLY BRIEF OF PLAINTIFF-APPELLANT

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*Counsel for Plaintiff-Appellant Sarah Palin*

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simply because plaintiffs label them “facts.” (Opp’n 14-20.) But *The Times* and *amici* misstate Palin’s pleading-stage burden and their caselaw is inapposite.

Although *The Times* and *amici* trumpet First Amendment rights, the Supreme Court already struck the balance between public-figure defamation-plaintiffs’ rights to recover for defamatory statements and defamation-defendants’ First Amendment rights by requiring public-figure defamation-plaintiffs to allege and ultimately prove actual malice. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964); *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 860 (5th Cir. 1993) (“Legal standards of necessity reflect a balance of competing considerations.”). Thus, as *The Times*’ own cases acknowledge, **pleading standards for defamation claims are the same as for other claims under Rule 8**: “we have long made clear that ‘defamation actions are, for procedural purposes, to be treated ***no differently*** from other actions.’” *Biro v. Conde Nast*, 807 F.3d 541, 545 (2d Cir. 2015) (alterations omitted); *Cabello-Rondon v. Dow Jones & Co.*, 720 F. App’x 87, 88 (2d Cir. 2018) (“‘[M]alice must be alleged plausibly in accordance with Rule 8.’”); *Mayfield v. Nat’l Ass’n for Stock Car Racing*, 674 F.3d 369, 377 (4th Cir. 2012) (“[T]he usual standards of notice pleading apply in defamation cases.”); *Schatz v. Republican State Leadership Comm.*, 669 F.3d 50, 58 (1st Cir. 2012) (similar).

Moreover, the pleading standard is unaffected by public-figure defamation-plaintiffs’ ultimate burden of *proving* actual malice by clear and convincing evidence to prevail at trial. “[I]t is manifestly improper to import trial-stage evidentiary burdens into the pleading standard.” *Garcia-Catalan v. United States*, 734 F.3d 100, 103 (1st Cir. 2013); *Huri v. Office of the Chief Judge of the Circuit Court*, 804 F.3d 826, 834 (7th Cir. 2015) (“[P]leading standards ... are, of course, different from the evidentiary burden a plaintiff must subsequently meet.”); *Lewis v. Trustmark Ins. Co. (Mut.)*, 182 F.3d 908, at \*5 (4th Cir. 1999) (similar). This makes sense. Because “courts do not consider evidence outside the pleadings in resolving a motion to dismiss ... application of the ‘clear and convincing standard’—a burden of **proof**—is not logically sound.” *Crypto Research, LLC v. Assa Abloy, Inc.*, 236 F. Supp. 3d 671, 678-79 (E.D.N.Y. 2017).

*The Times* fares no better in asking the Court to reject Palin’s well-pleaded facts and favorable inferences based on alternative inferences it proffers. *The Times*’ fact-specific caselaw demonstrates that courts may only reject plaintiffs’ allegations and inferences in extreme circumstances, such as where plaintiffs make “fanciful,” “fantastic,” “delusional” conspiracy allegations,<sup>2</sup> allegations directly contradicted by

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<sup>2</sup> *Gallop v. Cheney*, 642 F.3d 364 (2d Cir. 2011); *McNaughton v. De Blasio*, 644 F. App’x 32 (2d Cir. 2016) (bare allegations of conspiracy “spanning several years ... dozens of police officers, and numerous underage children”); *Davila v. Johnson*, No. 15-cv-2665, 2015 WL 87968357 (S.D.N.Y. Dec. 15, 2015) (similar).

Date: May 29, 2018

Respectfully Submitted,

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*Attorneys for Plaintiff-Appellant Sarah Palin*

# Exhibit 64

Timothy Crawford

May 12, 2020

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 CASE NO.: 17 Civ. 4853

4 SARAH PALIN, an individual,

5 Plaintiff,

6 -vs-

7  
8 THE NEW YORK TIMES COMPANY,  
9 a New York corporation, and  
10 JAMES BENNET, an individual,

11 Defendants.  
12 \_\_\_\_\_/

13 VIDEOTAPED

14 DEPOSITION

15 OF

16 TIMOTHY CRAWFORD  
17 (Via Videoconference)

18  
19 May 12, 2020  
20 10:03 a.m. - 1:19 p.m.

21 (Proceedings conducted remotely)

22  
23 Stenographically Reported By:  
24 SHARON VELAZCO, RPR  
25 Registered Professional Reporter

May 12, 2020

2

## APPEARANCES

(All participants appearing remotely)

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Also Present: Dan Macom, Remote Video Technician  
U.S. Legal Support Services

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— — —

1           You can answer.

2           THE WITNESS: Thought I waited long enough --

3           I didn't.

4 BY MR. SULLIVAN:

5           Q. Do you know if anyone else at Sarah PAC requested  
6 a retraction?

7           A. I don't.

8           Q. Were there any discussions requesting a  
9 retraction or correction that you are aware of?

10          A. Not that I'm aware of.

11          Q. Did Mrs. Palin ever plan to run for president in  
12 2012?

13          A. Did she ever?

14          Q. Yes.

15          A. Yes.

16          Q. Did you discuss it with her?

17          A. I did.

18          Q. And what was the -- what was said in those  
19 discussions?

20          A. How much work it was going to be; it was going to  
21 be a lot of work.

22          Q. And how would it have been a lot of work?

23          A. Oh, my gosh. Running for president?

24                Just the amount of money you have to raise.

25                The amount of money you have to raise is

May 12, 2020

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## 1 CERTIFICATE OF REPORTER

2  
3 STATE OF FLORIDA

4 COUNTY OF MIAMI-DADE

5  
6 I, SHARON VELAZCO, Registered Professional  
7 Reporter, certify that I was authorized to and did  
8 stenographically report the deposition of TIMOTHY  
9 CRAWFORD; and that the transcript is a true record of my  
10 stenographic notes.

11 I further certify that I am not a relative,  
12 employee, attorney, or counsel of any of the parties, nor  
13 am I a relative or employee of any of the parties'  
14 attorneys or counsel connected with the action, nor am I  
15 financially interested in the action.

16  
17 Dated this 12th day of May, 2020.

18  
19   
20 SHARON VELAZCO, RPR  
Registered Professional Reporter



# Exhibit 65

1  
2 IN THE UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - -x

5 SARAH PALIN,

No. 17-cv-4853

6 Plaintiff,

7 v.

8 THE NEW YORK TIMES COMPANY and  
9 JAMES BENNET,

Defendants.

10 - - - - -x

11  
12 Remote videotaped deposition of SARAH  
13 PALIN, taken pursuant to Subpoena, was held via  
14 videoconference, commencing May 20, 2020, at  
15 12:59 p.m., on the above date, before Amanda  
16 McCredo, a Court Reporter and Notary Public in the  
17 State of New York.

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ALSO PRESENT:

Alexandra Perloff-Giles - New York Times

Daniel Macom - videographer

Colleen McKenzie - Alaskan notary

1 S. Palin

2 Q Okay.

3 A And the others all have their own places.

4 Q Now, after -- well, let me ask you this  
5 way:

6 When did you resign as governor of Alaska?

7 A I announced it around the fourth of July  
8 weekend of '09, yes.

9 Q And why did you resign as governor of  
10 Alaska?

11 A Inundated with those frivolous lawsuits and  
12 ethics violations. They're absolutely bankrupting  
13 my family because the Department of Law -- again,  
14 this was unprecedented in the state of Alaska and  
15 Department of Law had not known, really, how to deal  
16 with complaints against the governor. Having not  
17 dealt with it before, not knowing well what should  
18 we defend on the taxpayers' dime and what should  
19 Sarah Palin, as an individual, pay for the defense  
20 of. And not only the financial impact that was  
21 absolutely overwhelming and unfair to my family and  
22 future generations of family, but I knew that going  
23 into a lame duck session -- lame duck -- the  
24 legislature was heading into lame duck, I knew that  
25 the intention of the obstructionist was to make sure

C E R T I F I C A T E

I, AMANDA McCREDO, a Shorthand Reporter  
and Notary Public of the State of New York, do  
hereby certify:

That the witness whose examination is  
hereinbefore set forth was duly sworn, and that  
such examination is a true record of the  
testimony given by such witness.

I further certify that I am not related to any  
of the parties to this action by blood or  
marriage, and that I am in no way interested in  
the outcome of this matter.



AMANDA McCREDO

6/2/20

# Exhibit 66

H7VVPALA1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 SARAH PALIN, *an individual*,

4 Plaintiff,

5 v.

17 CV 4853 (JSR)

6 THE NEW YORK TIMES COMPANY, *a*  
7 *New York corporation*,

8 Defendant.

ARGUMENT

-----x

9 New York, N.Y.

10 July 31, 2017

4:17 p.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

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17 -AND-

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19 LEVINE SULLIVAN KOCH & SCHULZ  
Attorneys for Defendant

20 BY: DAVID A. SCHULZ  
JAY W. BROWN  
21 JEREMY A. KUTNER

H7VVPALA1

1 I'd like to start by stressing the First Amendment  
2 overlay that exists here, because this case raises issues that  
3 are of central concern to the First Amendment, which is  
4 designed to protect robust speech on matters of public debate.

5 This is a case arising out of an editorial on gun  
6 control issued the same day as that shooting. It wasn't  
7 sometime earlier, it was that day, which also explains how it  
8 was written and the time it was written under.

9 THE COURT: Well, I'm happy to hear your stump speech,  
10 but I think it's common ground that when a public figure is  
11 involved, even false statements are protected unless they were  
12 done with actual malice. But if they are done with actual  
13 malice, then there is no First Amendment protection, true?

14 MR. SCHULZ: That is correct, Judge.

15 But the point I'm trying to make is that the First  
16 Amendment overlay affects all of the theories that we argued as  
17 to why and the grounds for dismissal here are in view with  
18 constitutional concerns. Everywhere there's a closed question,  
19 the courts have made clear, the Second Circuit has made clear  
20 that that First Amendment overlay says that you should be  
21 resolving all doubts in favor of protecting the First  
22 Amendment.

23 THE COURT: I hear you. But, on the other hand, isn't  
24 it true on any motion to dismiss that all reasonable inferences  
25 favorable to the adverse party, the party against whom the